

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2323

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**DUANE OSLEY
and KAREN OSLEY, husband and wife, and,
MATTHEW OSLEY, minor child of Duane and Karen Osley,
by his Guardian ad Litem, Michael Devanie,**

Plaintiffs-Appellants,

v.

MSI INSURANCE COMPANY,

Defendant-Respondent,

**AUSTIN MUTUAL INSURANCE COMPANY,
AUTO OWNERS INSURANCE COMPANY,
ROBERT C. SKEMP,
JOSHUA OSLEY,
and BLUE CROSS - BLUE SHIELD UNITED OF WISCONSIN,**

Defendants.

APPEAL from a judgment of the circuit court for La Crosse County: PETER G. PAPPAS, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

PER CURIAM. Duane and Karen Osley and their son, Matthew Osley, by his guardian ad litem (Osleys) appeal from a circuit court judgment dismissing their claims against MSI Insurance Company for injuries Matthew sustained when he fell from a tractor being operated by his older brother, Joshua. For the reasons set forth below, we affirm.

BACKGROUND

On June 27, 1990, Matthew Osley, then eight years old, fell from a tractor being operated by his older brother, Joshua, then fifteen, as the two rode on a tractor to fetch the family mail. At the time of the accident, the Osleys were tenant farmers for Robert C. Skemp, who owned the tractor. Joshua was permitted to use the tractor by Skemp and by his father.

After the accident, the Osleys made claims against MSI, as well as other insurance companies. Duane Osley (father) had two separate insurance policies on automobiles with MSI, and Joshua was an insured on each policy.¹ Specifically at issue is whether MSI's auto insurance policies directly insure the tractor; or whether coverage is offered through either the underinsured motorist provision or the uninsured motorist provision.

We conclude that there is no direct liability insurance for the tractor. We also conclude that the issues of un- or underinsured motorist coverage are moot.

DIRECT INSURANCE FOR THE TRACTOR

¹ Duane also had homeowner's insurance with MSI. However, the homeowner's policy issue is neither briefed nor argued, and we do not consider it further.

MSI does not dispute that had Joshua been operating a car, there would be coverage for Matthew's injuries. This is because the insured under the policy is "any relative" of Duane's who is making "use of your insured car or a non-owned car." MSI disputes, however, whether a tractor can be a "car."

The Osleys argue that the tractor can indeed be a "car." They point to the policy definition of car as "a land motor vehicle designed for use on public roads and having at least 4 wheels." Because a tractor has at least four wheels, and can be used on public roads, the Osleys argue that it fits the policy definition of a "car."

We agree with MSI. A tractor is not a car. Although a tractor generally has at least four wheels, and although it may be operated on public roads, a tractor is a "motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry." Section 340.01(16), STATS. The fact that this "farm implement" can be operated on public roads does not serve to transform it into a "car." In addition, under § 632.32(2)(a), STATS., "motor vehicle" for insurance purposes is specifically defined to "not include farm tractors"

Further, it is "fundamental that insurance policy language should be given its common everyday meaning and should be interpreted as a reasonable person in the insured's position would understand it." *Sprangers v. Greatway Ins. Co.*, 175 Wis.2d 60, 67, 498 N.W.2d 858, 862 (Ct. App. 1993), *aff'd*, 182 Wis.2d 521, 514 N.W.2d 1 (1994). A reasonable person instructed, for example, to please run an errand by car would not understand that a trip to town on the tractor was contemplated.

UN- AND UNDERINSURED MOTORIST COVERAGE

As originally presented to this court, this appeal also raised the issue of whether Duane's MSI auto policy offered coverage for Joshua through un- or underinsured motorist provisions. By order, we requested the parties to advise whether this argument remained viable in light of MSI's contention that other insurance policies offered coverage to Joshua for the injury to Matthew.

The parties responded and indicated that due to an intervening settlement, these issues are moot.

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.